

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

BellSouth Telecommunications, Inc.'s Petition
for Forbearance

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WC Docket No. 04-48

OPPOSITION OF AT&T CORP.

Leonard J. Cali
Lawrence J. Lafaro
Dina Mack
AT&T Corp.
One AT&T Way
Room 3A232
Bedminster, NJ 07921
(908) 532-1839

Attorneys for AT&T Corp.

March 15, 2004

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OPPOSITION OF AT&T CORP.

Pursuant to the Commission's March 4, 2004 *Public Notice*¹ in the above-captioned docket, AT&T Corp. ("AT&T") submits this Opposition to the petition for forbearance ("Petition") filed by BellSouth Telecommunications, Inc. ("BellSouth").²

The Petition should be denied. BellSouth's petition is substantively identical to the pending forbearance petition filed by Verizon,³ and similar to the petitions filed by SBC⁴ and Qwest.⁵ BellSouth asks the Commission to "forbear from applying any stand-alone unbundling

¹ See Public Notice, WC Docket No. 04-48 (March 4, 2004).

² See Petition for Forbearance of BellSouth Telecommunications, Inc., WC Docket No. 04-48 (filed March 1, 2004).

³ See *Ex Parte* Letter from Susanne A. Guyer, Verizon, to Chairman Michael Powell, et al., FCC, CC Dkt. No. 01-338 (filed Oct. 24, 2003). The Commission has chosen to treat this *ex parte* letter as a forbearance petition.

⁴ See Petition of SBC Communications Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 03-235 (filed Nov. 6, 2003).

⁵ See Petition for Forbearance of Qwest Communications International Inc., WC Docket No. 03-260 (filed Dec. 18, 2003).

obligations on broadband elements.”⁶ Verizon’s forbearance request is identical, while SBC and Qwest have sought forbearance with respect to both narrowband and broadband elements.

As an initial matter, it bears noting that BellSouth requests the Commission to forbear from applying obligations that it does not believe exists. BellSouth has taken the position that Section 271 does not establish an independent unbundling obligation for broadband elements and has therefore requested the Commission to clarify that it did not intend to suggest in the Triennial Review Order that section 271 created any such obligation.⁷ Of course, BellSouth’s position is wrong, but if it were true, there would be nothing from which to forbear.

Even aside from the logical inconsistency in BellSouth’s position, its request should be denied for the multiple dispositive reasons that AT&T and others stated in their filings with respect to the petitions filed by Verizon, SBC and Qwest. Because BellSouth’s arguments are the same as those made by the other Bell Operating Companies (“BOCs”), AT&T is attaching hereto certain of its filings with respect to those petitions. *See* Attachment 1 (Opposition of AT&T Corp., *Petition for Forbearance of the Verizon Telephone Companies*, CC Docket No. 01-338 (Nov. 17, 2003)); Attachment 2 (Opposition of AT&T Corp., *SBC Communications Inc.’s Petition for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 03-235 (Dec. 2, 2003)); Attachment 3, Ex Parte Letter from David Lawson, AT&T, to Marlene Dortch, FCC, CC Docket No. 01-338, WC Docket Nos. 03-235 & 03-260 (Mar. 3, 2004). In those filings,

⁶ Petition at 1.

⁷ *See* Petition of BellSouth for Clarification and/or Partial Reconsideration, CC Docket Nos. 01-338, 96-98, 98-147 (October 3, 2003).

AT&T has demonstrated that the relief requested by BellSouth (and the other BOCs) is foreclosed for three independent reasons.

First, and foremost, the Commission is barred from granting the relief BellSouth seeks under section 271(d)(4) of the Communications Act, which expressly states that “[t]he Commission *may not*, by rule *or otherwise*, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).”⁸ This specific statutory provision concerning the competitive checklist trumps the more general provisions of section 10 concerning the Commission’s forbearance authority. *See, e.g., Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 524-26 (1989) (specific statutory provision trumps a more general one). Thus, notwithstanding its general authority to forbear from enforcing provisions of the Act, the Commission “may not” use forbearance to limit the terms of the competitive checklist, which is indisputably what BellSouth seeks in its Petition. By its plain terms, section 271(d)(4) ensures that, as long as a BOC offers (or intends to offer) in-region interLATA services, it must comply with an irreducible core of network access requirements.

Second, BellSouth’s Petition is fatally premature. A separate statutory limitation, section 10(d), bars the Commission from even applying the section 10(a) forbearance criteria to the rules targeted by BellSouth until the “requirements” of sections 251(c) and 271 “have been fully implemented.” BellSouth’s argument that the mere grant of section 271 authority compels a finding that section 271 requirements have been “fully implemented” has been squarely rejected

⁸ 47 U.S.C. § 271(d)(4) (emphasis added).

by the Commission. The Commission has now held that the grant of authority to provide interLATA service does *not* compel a finding that the “fully implemented” requirement is satisfied with respect to *all* of the provisions of sections 251(c) and 271.⁹ As reflected in the Commission’s decision, the “fully implemented” requirement is much more demanding than BellSouth contends. The term’s plain meaning demands a finding that the statutory requirements have been “carried into effect” “totally or completely,” an impossibility in present circumstances, given ongoing development of and challenges to the relevant requirements, state commissions’ ongoing efforts to implement section 251(c), and, most pertinently, the developing state of still-nascent local competition.

Third, given the Commission’s recent pronouncements and marketplace realities, BellSouth cannot meet the three specific requirements for forbearance contained in section 10(a), which focus on the protection of consumers and competition. With respect to broadband elements, competitive carriers would be unable to provide broadband services to many consumers without the provisions of section 271 that BellSouth seeks to avoid. The result would be, at best, broadband duopolies (and in some areas, broadband monopolies). Moreover, because the BOCs would be the only carriers able to offer consumers bundles of traditional voice and next-generation data services, competition in the provision of *all* services could seriously be impeded.

⁹ See Memorandum Opinion and Order, *Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation, and Maintenance Functions Under Section 53.203(a)(2) of the Commission’s Rules*, CC Docket No. 96-149 (rel. Nov. 4, 2003).

CONCLUSION

For the foregoing reasons and the reasons set forth in the Attachments hereto, the Commission should deny the Petition.

Respectfully submitted,

/s/ Dina Mack

Leonard J. Cali
Lawrence J. Lafaro
Dina Mack
One AT&T Way
Room 3A232
Bedminster, NJ 07921
(908) 532-1839

Attorneys for AT&T Corp.

March 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 15th of March 2004, I caused true and correct copies of the forgoing Opposition of AT&T Corp. to be served by electronic mail and by U.S. first class mail on the parties listed on the attached service list.

Dated: March 15, 2004
Washington, D.C.

/s/ Hagi Asfaw

Hagi Asfaw

SERVICE LIST

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Suite TW-A325
Washington, D.C. 20554*

Qualex International
Portals II
445 12th Street, SW, Room CY-B402
Washington, D.C. 20554**
Qualexint@aol.com

Janice M. Myles
Federal Communications Commission
Wireline Competition Bureau
Competition Policy Division
445 12th Street, SW
Suite 5-C327
Washington, D.C. 20554**
Janice.Myles@fcc.gov

Richard M. Sbaratta
Stephen L. Earnest
BellSouth Telecommunications, Inc.
Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

* Filed electronically via ECFS

** By electronic mail